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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,754	10/01/2004	Philip Marc Stewart	MIDTF-365P2	5753
26875	7590	11/28/2005	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			MAYO, TARA L	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/711,754

Applicant(s)

STEWART ET AL.

Examiner

Tara L. Mayo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/01/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the actuating mechanism as set forth in claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1 through 4 and 6 through 11 are rejected under 35 U.S.C. 103(a) as being obvious over Smith et al. (U.S. Patent Publication No. 2004/0068797 A1) in view of Tate (U.S. Patent No. 6,361,117 B1).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of

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invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Smith et al. '797, as seen in Figures 1 through 2A, show an articulating medical table (10) comprising:

with regard to claim 1,

a stationary base (12);

a seat section (86) mounted atop said base;

a back section (96) atop said base and cooperating with said seat section to support a patient thereon, said back section moveable between a first, inclined orientation relative to said seat section, for supporting a patient in a seated position, and a second orientation substantially parallel to said seat section, to support a patient in a generally supine position ({0039}); and

an actuating mechanism (87) coupled to said back section and selectively operable to move said back section between said first and second orientations;

with regard to claim 4,

further comprising foot operated controls (118); and

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with ranged to claim 6,

further comprising a procedure tray (54) slidably coupled to said base, said procedure tray moveable from a first position disposed substantially beneath said seat section and a second position wherein said procedure tray extends outwardly from said seat section.

Smith et al. '797 fail to teach:

the seat section comprising a seat frame defining a peripheral border and a central open area, and a layer of web material extending across the open area and secured to the seat frame;

the web material being formed of elastomer;

the web material being stretched approximately 10% to approximately 20% of its unstretched length when it is secured to the seat frame;

the foot operated controls used for activating the actuating mechanism;

cushion material disposed over the web material;

the cushion material including a layer of foam material and an upholstery cover layer;

the foam layer having a thickness of up to approximately 1.0 inch;

the foam layer having a thickness of up to approximately 0.56 inch;

the foam layer having a thickness of less than approximately 0.5 inch; and

the open area of the sea frame having a width, transverse to a longitudinal direction of the table, of at least approximately 12.0 inches.

Tate '117, as seen in Figures 1 and 3 through 6, shows a bucket seat (10) including a seat section (18) comprising a seat frame (26) defining a peripheral border and a central open area,

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and a layer of web material (58) extending across the open area and secured to the seat frame; wherein the web material is formed of elastomer (col. 3, lines 19 through 21); and further comprising a cushion material disposed over the web material (22) and an upholstery cover layer (col. 2, lines 24 through 28). Tate '117 expressly teaches use of the seat for providing a compact, low profile seat capable of providing comfortable support (col. 1, lines 29 through 35).

With regard to claims 1, 2, 7 and 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device shown by Smith et al. '797 such that it would include a seat section as taught by Tate '117. The motivation would have been to provide the medical table with a seat section comfortable to a user and having a low profile.

With regard to claim 3, Tate '117 is silent with respect to the degree of stretch of the web material. It would have been obvious to one having ordinary skill in the art at the time the invention was made stretch the web material of the device shown by the combination of Smith et al. '797 and Tate '117 approximately 10% to approximately 20% of its unstretched length. The motivation would have been to pretension the web material to a desired degree. Furthermore, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With regard to claim 4, while Tate '117 does not teach use of the foot operated controls for activating the actuating mechanism, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the foot controls such that they would be

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capable of performing the claimed function. The motivation would have been to for ease of control while raising and/or lowering the back section. Specifically, automated activation would eliminate the need for a physician to manually lift or lower a patient into a desired position.

With regard to claims 9 through 11 and 13, Applicant has not shown that the particular dimensions recited in the claims are critical or provide an unexpected result. As such, the limitations are met by the device shown by the combination of Smith et al. '797 and Tate '117 which is capable of being manufactured to the claimed dimensions. *In re Woodruff*, 919 F. 2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990).

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S. Patent Publication No. 2004/0068797 A1) in view of Tate (U.S. Patent No. 6,361,117 B1) as applied to claim 1 above, and further in view of Leeper et al. (U.S. Patent No. 4,516,805).

The combination of Smith et al. '797 and Tate '117 fails to teach:

a footboard slidably coupled to the base, the foot board being moveable from a first position disposed substantially beneath the seat section and a second position wherein the foot board extends outwardly from the seat section.

Leeper et al. '805, as seen in Figure 3, shows an examination chair comprising a footboard (36) slidably coupled to a base (22) of the chair and moveable from a first position disposed substantially beneath the seat section (32) of the chair and a second position, wherein the footboard extends outwardly from the seat section (col. 6, lines 60 through 66).

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With regard to claim 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device taught by the combination of Smith et al. '797 and Tate '117 such that it would further include a footboard as taught by Leeper et al. '805. The motivation would have been to provide support for a patient's feet.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S. Patent Publication No. 2004/0068797 A1) in view of Tate (U.S. Patent No. 6,361,117 B1) as applied to claim 1 above, and further in view of Welling et al. (U.S. Patent No. 6,880,189 B2).

The combination of Smith et al. '797 and Tate '117 fails to teach:

a heater associated with at least one of the seat section and the back section.

Welling et al. '189, as seen in Figures 41 and 42, show a patient support comprising a heating layer (340) made of a resistive heating material. Moreover, Welling et al. '189 expressly teach the selective association of the heating layer with different areas of the patient support (col. 28, lines 5 through 16).

With regard to claim 12, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device taught by the combination of Smith et al. '797 and Tate '117 such that it would include a heater as disclosed by Welling et al. '189. The motivation would have been to provide a means of warming a patient.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tlm
22 November 2005


TARA L. MAYO
PATENT EXAMINER